THE HON'BLE SRI JUSTICE GHULAM MOHAMMED

M.A.C.M.A.No.2771 OF 2006

JUDGMENT:

The appellant-claimant filed this appeal under Section 173 of the Motor Vehicles Act, 1988, against the order, dated 09.10.2006, passed by the I Additional Metropolitan Sessions Judge, Hyderabad in O.P.No.7 of 2004.

The brief facts of the case are that on 26.11.2003 at about 7.30 P.M., while the appellant-claimant and his parental uncle Veeraiah @ Edia were going on their scooter bearing No.AHA-3620 on upper tank bund towards Hyderabad and when they reached near Lepakshi, the driver of Qualis vehicle bearing No.AP-9X-1133, which was proceeding in the same direction at high speed, had taken extreme left and applied sudden brakes, due to which, the petitioner's vehicle dashed to the back portion of the said Qualis resulting fracture injuries to the petitioner. Hence, the petitioner filed the above said O.P. claiming compensation of Rs.1,50,000/-.

The owner of the crime vehicle remained e*x parte,* but the second respondent insurance company contested the matter by filing counter-affidavit denying all the material allegations.

On the strength of the pleadings, the Tribunal framed the points as to whether the accident resulting in injuries to the petitioner occurred due to rash and negligent driving of the driver of Qualis vehicle bearing No.AP-9X-1133 and whether the petitioner is entitled to compensation, if so, to what amount and from whom.

On behalf of the claimant, PWs.1 and 2 were examined and Exs.A1 to A8 were marked. On behalf of the insurance company, though none was examined, Ex.B.1-copy of insurance policy was marked.

The Tribunal having considered the oral and documentary evidence available on record came to the conclusion that the accident occurred due to rash and negligent driving by the driver of offending vehicle AP-9X-1133, which in the facts and circumstances of the case warrants no interference. The Tribunal awarded an amount of Rs.64,500/- as compensation. Dissatisfied with the said compensation, the claimant filed this appeal.

The learned counsel for the appellant contended that the Tribunal has erred in considering the income of the appellant at Rs.1,500/- per month, which is on lower side and, therefore, the same needs to be enhanced.

The learned counsel for the second respondent – Insurance Company contends that the compensation awarded by the learned Judge is quite reasonable and needs no interference.

There is no dispute with regard to the rash and negligent driving of the driver of the crime vehicle. Regarding the earnings of the appellant, the learned Judge has granted only Rs.1,500/- per month which in my considered view is very meagre. The Supreme Court in **Hardeo Kaur vs. Rajasthan State Transport Corporation**[1] held that the determination of compensation in respect of injury cases must be liberal. The relevant portion of the same reads as under:

> "the determination of compensation in respect of injury cases must be liberal and the amount of compensation so awarded should not be niggardly and at the same not a wind fall as a profit making venture through the Learned Judges or Courts. When the compensation is awarded by the Courts and Learned Judges even the tort feasor should feel that he is atoned for the sin committed by him in committing the accident robbing the precious life of a human being and injuring the innocent person for no fault of his and the guidelines from such precedents is only to emphasise that if there are two precedents dealing with the same question of assessing the compensation, the one which has adopted a liberal approach should be preferred than the one which has adopted the conservative approach."

In view of the above, I feel that an amount of Rs.3,000/- per month towards loss of earnings would meet the ends of justice.

Insofar as disability is concerned, it is claimed by the appellant that he sustained fracture of both bones of right leg. In support of his claim, he examined PW.2-doctor, Anurag Hospital, who stated that the appellant was admitted in the hospital on 26.11.2003 and was operated on 27.11.2003 with interlocking nail fixation and that the appellant got 10% partial disability.

Thus, the appellant is entitled to a sum of Rs.3,000/- per month towards loss of earnings, which comes to Rs.36,000/- per annum, out of which 10% should be taken for the purpose of determining the compensation towards disability and thereby, it comes to Rs.3,600/- per annum. Since the age of the appellant was 45 years at the time of accident, the appropriate multiplier for the said age group, as per the decision of the apex Court in **Sarala Verma v. Delhi Transport Corporation**[2] is "14". Then, the compensation towards 10% disability comes to Rs.3,600X14=Rs.50,400/-. In addition, a sum of Rs.15,000/- towards pain and suffering and Rs.15,000/- towards medicines is awarded. Therefore, in all, the compensation comes to Rs.80,400/-. Thus, the compensation awarded by Learned Judge is enhanced from Rs.64,500 to Rs.80,400/-. The enhanced amount shall carry interest at 7% per annum from the date of petition till realisation.

With the above modification, the appeal is allowed in part. There shall be no order as to costs.

GHULAM MOHAMMED, J

Date:17.03.2011
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[1] AIR 1992 SC 1261
[2] 2009 (6) SCALE 129